

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
FEBRUARY 11, 2015**

**CALL TO
ORDER
6:04 pm**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1st Ave W, Kalispell, Montana. Board members present were Marie Hickey-AuClaire, Tim Calaway, Kevin Lake, Mike Horn, Dean Sirucek, Jim Heim and Jeff Larsen. Greg Stevens and Ron Schlegel had excused absences. BJ Grieve and Erik Mack represented the Flathead County Planning & Zoning Office.

There were 9 people in the audience.

**APPROVAL OF
MINUTES
6:05pm**

Heim made a motion, seconded by Lake to approve the January 14, 2015 meeting minutes.

The motion passed by quorum.

**PUBLIC
COMMENT
(2-3-103 M.C.A.)
6:06 pm**

None.

**EVAN SHAW
(FZC-14-06)
6:06 pm**

A Zone Change request in the Southeast Rural Whitefish Zoning District by Evan Shaw. The proposal would change the zoning on approximately 62.48 acres from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural). The property is located at 4435 Highway 40 West.

STAFF REPORT

Mack reviewed Staff Report FZC-14-06 for the Board.

**BOARD
QUESTIONS**

Sirucek and Mack discussed if the property was located in the former Whitefish donut and subject to interim zoning.

Mack reviewed the history of the zoning of the property.

Calaway and Mack discussed if a PUD (Planning Unit Development) was needed to do a cluster development or if it was an allowed use.

Mack said it was a permitted use in a SAG-5 zone, so a PUD was not necessary.

**APPLICANT
PRESENTATION**

Eric Mulcahy, Sands Surveying, represented the applicant. He commended Mack on his staff report. The way they looked at the proposed zoning was they were in a transition between zones. He went on to explain the zoning and properties around the application property and why they were asking for the SAG-5 zoning which would allow them to look at development down the road where they could cluster or do a PUD. Clustering or a PUD would allow more density in exchange for open space. There was no plan for subdivision now, they were exploring options. One option, which was not readily available, was to connect to Whitefish City Water and Sewer and annex into the city because the city had an infill clause in their development code. They did not see meeting the requirements to connect to city services in the near future. He explained the infill clause. They did not see the ability of fulfilling the clause in the near future. The owner would like to look at something in the interim and SAG-5 would allow them to do something which would be sensitive to all the neighborhoods around them in this area. The property did fall within the 1996 Whitefish City-County Master Plan. Both the text and the map were looked at for the application. The text did support clustering development in the agricultural areas. The map set the density, however the current zoning of SAG-10 did not necessarily follow the map now. They had concluded they were more in conformance with the plan than not. They would appreciate the board's consideration and a vote of favorable recommendation of the application. He would be happy to answer any questions the board might have regarding the application.

**BOARD
QUESTIONS**

Larsen and Mulcahy discussed what the nearest city zoning was, how the zoning transitioned and compatibility to nearby municipal zoning now. They also talked about how the municipal zoning was compatible with what the applicant was proposing.

Mulcahy said the city's master plan and zoning recognized there were suburban agricultural uses next to urban zoning. What they were proposing was the same zoning with smaller density. The uses were almost the same between SAG-10 and SAG-5. There were city uses which precluded agricultural uses at the border of their property. He could see the proposed change impacting the urban uses or urban zoning. Up until July the Whitefish growth policy recognized the suburban agricultural zones being right next to the city.

Sirucek and Mulcahy discussed the designation of important farm land, the density allowed for important farm land, differences between the master plan and the suburban agricultural and agricultural designations in the former donut.

Mulcahy said as stated in the staff report both the map and the text were looked at. The text of the master plan supported what they were requesting and clustering of development if that is the direction they went in the future.

**AGENCY
COMMENTS**

Dave Taylor, City of Whitefish Planning Office, said the property was designated as rural in the Whitefish City-County Master Plan. Rural densities were 10 acres or 20 acres so the five acre proposal would not be compatible with the Whitefish Growth Policy. The existing 1996 Master Plan called out the land as important farm land which had a 20 acre minimum lot size. They felt the proposal was incompatible with both of those documents. He gave the board a hand out.

**PUBLIC
COMMENT**

Hickey-AuClaire suggested the board take time to review the written comment which was submitted by Taylor and another written comment presented to the board before the meeting.

The board silently reviewed the written comments.

Sirucek asked Taylor if he saw some inconsistency in planning between one side of the street having the densest housing seen anywhere in the valley and across the street having 10 to 20 acre lots. Typically he thought there would be some gradation.

Taylor said there were a lot of areas around the city of Whitefish where there were suburban densities which suddenly turned into rural densities like any urban boundary. Kalispell had the same thing. All those areas were subject to floods and transitions, that was why they had a master plan. Somewhere along the line the decision had to be made where suburban densities stopped and rural started. The community had chosen that area as a boundary.

Rebecca Norton, 530 Scott Ave, was against the application.

Mayre Flowers, Citizens for a Better Flathead, 35 4th Street, was against the application.

**APPLICANT
REBUTTAL**

None.

**STAFF
REBUTTAL**

None.

**BOARD
DISCUSSION**

Larsen said with this application they had the '96 city-county master plan and the growth policy and were looking at the Whitefish growth policy. He asked for confirmation of his thoughts that according to the zoning regulations, the requirement was they had to be compatible with, as nearly possible, the nearby zoning ordinances of the municipality.

Mack said two were addressed and the other one was compatible with urban growth of a municipality.

Grieve read twice M.C.A. 76.2.203(2) which stated 'in the adoption of zoning regulations, the board of county commissioners shall consider, (c) compatible urban growth in the vicinity of cities and towns that at a minimum must include the area around municipalities.' Then read twice 76.2.203(3) which stated 'zoning regulations must, as nearly as possible, be made compatible with the zoning ordinances of nearby municipalities.'

Larsen asked Grieve to address those two issues on this application.

Mack read finding of fact #12. 'The proposal does not appear to be compatible with urban growth in the vicinity of Whitefish because the property is located within the City of Whitefish Growth Policy Future Land Use Map and the proposed SAG-5 zone would allow for a 5 acre minimum lot size and the "Rural" designation calls for 15 acre minimum lots, however the City of Whitefish had no comments regarding this request.' Obviously Whitefish had come to make comment at the meeting. He said finding #15 had come from WA zoning and explained how Whitefish did not have a 10 or 20 acre lot size but did have 15 acre lot size which is why he had put the 15 in the finding. He read finding of fact #15 which stated, 'the proposed map amendment appears to be, as nearly as possible, compatible with the zoning ordinance of Whitefish because the proposed SAG-5 zone has a minimum lot size requirement greater than the minimum lot size of the WR-2 zone but are less than the

minimum of the WA zone and the permitted uses within the SAG-5 zone are similar to the permitted uses within the City's WA zone and the City of Whitefish had no comments regarding this request.'

Grieve explained the findings were based on the analysis on page 26, 28 and 29 of the staff report. For the board's consideration, he read a section out of the 1996 Whitefish City-County Master Plan. The same provision was written into the Kalispell City-County Master Plan. It stated on page three: 'The Master Plan is composed of two major components, the text and the Master Plan Map, and supported by a comprehensive Resource and Analysis Document. Both the text and map are equally important and must be equally weighed. To adequately interpret and implement the Plan, both must be consulted for insight and direction. Relying on only one component will not always give a clear picture of the broad community concepts or the spirit of the Plan. Worse, it may lead to a twisting or manipulation of the Plan. Each of the two components is explained below in greater detail.' He offered to read them if the board wanted. He said this was something the office dealt with on a regular basis with the Kalispell city-county master plan and the Whitefish city-county master plan. He gave an example of someone not complying with the map and said the office had to weigh both the text and the map. They were always dealing with the issue of if the map needed to be amended or not. That was why they had it broken down the way they had it broken down in the analysis.

**MAIN MOTION
TO ADOPT
F.O.F.
(FZC-14-06)**

Sirucek made a motion seconded by Larsen to adopt staff report FZC-14-06 as findings-of-fact.

Hickey AuClaire confirmed it had been moved by Sirucek and seconded by Larsen that the board accept the findings of fact on FZC-14-06 and asked for discussion.

**ASK THE
QUESTION**

Horn asked the question.

**BOARD
DISCUSSION**

Grieve asked to be recognized.

Hickey-AuClaire recognized Grieve.

Grieve said in addition to the findings staff just pointed out, staff also wanted to draw the attention of the board to finding #3 and

finding # 4. Finding #3 was regarding compliance with the map and finding #4 discusses compliance with the text. That was in relation to the section of the plan he just discussed how the two must be equally weighed. He wanted to draw their attention to those findings as additional analysis was done related to Larsen's question.

Larsen said basically Grieve was saying the application complied with the text, but it may not comply with the map.

Mack said it appeared to apply with the text but not with the map.

Sirucek said that was the interpretation he was getting. The text did not conflict with the map. Some of the criteria tied to the map unit, zoning map units do conflict.

Mack agreed.

Larsen confirmed a concern raised during public comment concerning spot zoning had been addressed in the staff report.

Mack said yes.

Larsen asked if Mack could address that again for the board.

Mack read finding #1 which said 'The proposed zoning map amendment does not appear to constitute spot zoning because the proposed SAG-5 zone would allow for similar uses to what is allowed within the existing SAG-10, the minimum lot size in the SAG-5 zone is in the middle of the minimum lot sizes of surrounding zones and the proposed zoning maintains the rural character of the overall zoning district.' The surrounding zones were R-2.5 which was 2 and one half acre size, SAG-10 which has a minimum lot size of 10 acres and the city of Whitefish has some pretty high densities in the area as well.

Hickey-AuClaire said the question had been called on the motion to accept findings of fact on FZC-14-06 and asked for a roll call vote.

Grieve said at minimum, the board needed to correct the findings which stated no comment was received from the city of Whitefish because prior to adoption of the findings of fact, comment was received from Whitefish.

Both Mack and Grieve said there were two findings which needed to be amended.

Grieve said prior to adopting findings the board needed to clarify the two findings because they were incorrect at this point.

Sirucek asked if they needed to amend the motion.

Grieve said they needed to make a sub motion to amend the findings. He said they could strike the finding or amend the language based on the board's findings in relation to Mr. Taylor's comment.

**SECONDARY
MOTION TO
(Amend F.O.F.
#12 and #15)**

Hickey-AuClaire asked if there was a motion to add that language that the board did receive comment from the city of Whitefish.

Calaway said I'll make a motion that we add that. Horn seconded.

Hickey-AuClaire said it has been motioned by Calaway and seconded by Horn that the board amend finding #12 and #15 because they did receive comment from the city of Whitefish. She said they could strike the last sentence "City of Whitefish has not submitted comment."

**BOARD
DISCUSSION**

The board discussed alternate wording.

**ROLL CALL TO
(Amend F.O.F #12
and #15)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Calaway asked if the board wanted to vote to accept the text at this point.

Hickey-AuClaire said the motion would be the board accepted findings of fact as amended.

Grieve said that was correct unless they had any other amendments to other findings.

Hickey-AuClaire said the question had been called and asked for a roll call.

**ROLL CALL TO
ADOPT F.O.F.
AS AMENDED
(FZC-14-06)**

On a roll call vote the motion passed unanimously.

**MAIN MOTION
TO
RECOMMEND
APPROVAL OF
CONDITIONS
(FZC-14-06)**

Calaway made a motion seconded by Lake to accept FZC-14-06 and send a positive recommendation to the County Commissioners.

Hickey-AuClaire repeated the motion.

**BOARD
DISCUSSION**

Larsen said the biggest issue from of the comments and staff report they had was the '96 master plan they were going off of. The map showed essentially, based on our comments that it may not be compatible and the text says it was compatible. The question was did they have the justification to approve it. He asked Grieve to read the statement out of the master plan again on the two items. He was interested in the conflict between the text and the map.

Grieve said he was siting from the 1996 Whitefish City-County Master Plan in the introduction on page three. 'Plan components. The Master Plan is composed of two major components, the text and the Master Plan Map, and supported by a comprehensive Resource and Analysis Document. Both the text and map are equally important and must be equally weighed. To adequately interpret and implement the Plan, both must be consulted for insight and direction. Relying on only one component will not always give a clear picture of the broad community concepts or the spirit of the Plan. Worse, it may lead to a twisting or manipulation of the Plan. Each of the two components is explained below in greater detail.' He said there was a section on the text and a section on the map.

Larsen asked how long the sections were.

Grieve said they were a paragraph each.

Larsen asked Grieve to read the sections.

Grieve continued to read from the master plan. 'Text. The text contains six major elements: Land Use; Agriculture; Transportation; Public Facilities and Services; Parks and Open Space; and Implementation. These elements are further divided

into 16 chapters. Each chapter contains a series of issue statements intended to summarize the most important issues, trends, positive attributes or perceived problems surrounding the element. Each chapter then contains one or more broad goals. These goals provide the publicly stated direction and which are intended to be give more detailed direction in land use decisions to achieve the goals. Finally, each chapter contains recommendations that put forward specific public actions to implement the Plan. Regarding the map. Map. The Master Plan Map is the graphic illustration of the Master Plan reflecting a composite of all six major plan elements. Based on the Land Use Element, the Master Plan Map represents the recommended growth pattern for the Planning Jurisdiction. Based on the Agricultural Element, the most productive agricultural and forest management lands are marked for preservation. Based on the Transportation Element, the Map presents the present and future major road systems. Based on the Public Facilities and Services Element, present and future public lands are shown as they interrelate with the overall community design. Finally, the Parks and Open Space Element presents the existing parklands as well as optimum locations for new parklands to meet the growing needs of the Planning Jurisdiction. In addition, environmentally sensitive areas are identified, generally consisting of water bodies and shoreline, wetlands, or critical habitat. Two Master Plan Maps are included in this document because of the geographically large size of the Planning Jurisdiction. Map B (page vii) depicts the entire Planning Jurisdiction but presents information primarily for the outlying areas. Map C (found in a pocket at the end of the Plan) is a detail of Map B showing on a larger scale the urbanized area of Whitefish.'

Larsen thanked Grieve for reading the information.

Calaway liked the fact they were still able to cluster without going through a PUD. He enjoyed the fact people would consider clustering if nothing else. As a personal recommendation, without any teeth, to the developer he would suggest at least thinking or considering a cluster development. That way people had the best of both worlds. It saved on development costs, and helped with shared water. It looked like a good thing if he was able to say anything like that.

Hickey-AuClaire clarified the zoning on the section of the visual aid map with Mack.

Grieve asked where the map the visual aid was in the staff report.

Mack said it was figure six, page 16.

Hickey Au-Claire asked the timeline the current zoning was put into place.

Mack could not confirm a timeline for the placement of zoning.

Hickey-AuClaire tried to confirm what the zoning allowed.

Mack said there were the growth policy and the master plan which had zoning for consideration of the application.

Heim said there was always opposition to what was proposed before the board. When he read the staff report, he could see higher density on two different sides of the application property and it was on a major highway. He asked where people would want to see development occur. He saw a natural development of a growing community. The staff report said the board was not in conflict with the narrative of Whitefish's growth plan even though Whitefish planning staff said it was. If the county planning staff said it was not a problem and it looked like a natural area to grow, he did not see it as a problem. He would support a positive recommendation.

Larsen said he asked the regulations be read for compatibility with nearby municipalities because the SAG-5 was more compatible to municipal zoning than the SAG-10 just because of the density of it. He thought it worked both ways. If they were supposed to be compatible to it, it seemed the smaller SAG-5 was more compatible with the zoning right next to it. There was not much difference between SAG-5 and SAG-10. It was the density that was allowed in them. The density of SAG-5 was more compatible with what was to the west of the property.

Lake said it seemed to be a proper buffer.

It made sense to Larsen.

Sirucek said he had the same perception. There were some uses in SAG-10 which, if they were set up, there would be a lot of complaints from across the road. It made sense as a transitional zone. He said he was a soil scientist. The soils were moderately

good, but not excellent. On a scale of 1-10, they were about a 6. He did not like to see farmland subdivided, but the situation they were talking about and the distance they were talking about, this was not one he would hang his hat on the agricultural land they were dealing with.

Heim said concerning the road comment, roads would always lag development. The road will never be developed first.

The board continued to discuss the road comment and the role of the development of the roads.

Hickey-AuClaire said at this point they were looking at a zone change. If, in the future, the applicant were to come before the board with a proposal, that was the opportunity to look at buffering and clustering and opportunities that way.

**ASK THE
QUESTION**

Calaway asked the question.

Hickey-AuClaire repeated the motion on the table.

**ROLL CALL TO
RECOMMEND
APPROVAL OF
(FZC-14-06)**

On a roll call vote the motion passed unanimously.

**BOARD
DISCUSSION**

Hickey-AuClaire said the motion had passed and reviewed for the public the process of the application from this point on.

OLD BUSINESS

None.

**NEW BUSINESS
6:52 pm**

Grieve said as far as staffing, Alex Hogle was no longer with the office. He reviewed what areas Hogle was responsible for and who his projects were reallocated to.

ADJOURNMENT

The meeting was adjourned at approximately 6:54 pm. on a motion by Calaway. The next meeting will be held at 6:00 p.m. on March 11, 2015.

Marie Hickey-AuClaire, Chairman

Donna Valade, Recording Secretary

APPROVED AS **SUBMITTED**/CORRECTED: 3 / 11 / 15